

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

ANDRE' WILSON,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-22734

OFFICER TIM PATTERSON, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

Before the Court are Plaintiff's Complaint [ECF 2] filed pursuant to 42 U.S.C. § 1983; a motion to dismiss [ECF 30] filed by Defendants Jim Rubenstein, David Ballard, Jason Collins, Paul Perry, Cheryl Chandler, and Captain Williams; a motion to dismiss [ECF 39] filed by Defendant Ralph Terry; Plaintiff's motion for default judgment against Defendant Tim Patterson [ECF 54]; and Plaintiff's motion for entry of default against Defendant Tim Patterson [ECF 58]. By Standing Order entered April 8, 2013, and filed in this case on September 9, 2013, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings of fact and a recommendation for disposition ("PF&R"). Magistrate Judge Tinsley filed his PF&R [ECF 72] on January 8, 2015, recommending that this Court grant in part the defendants' motions, deny Plaintiff's motions, and leave this matter referred to the Magistrate Judge for additional proceedings concerning Plaintiff's remaining claims. On January 12, 2015, Plaintiff filed a motion to dismiss Defendants Paul Perry, David Ballard, Jim Rubenstein, Jason Collins, Cheryl Chandler, and Ralph Terry [ECF 73].

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R in this case were due on January 26, 2015. To date, no objections have been filed.

Accordingly, the Court **ADOPTS** the PF&R [ECF 72]; **GRANTS IN PART** the motion to dismiss [ECF 30] filed by Defendants Jim Rubenstein, David Ballard, Jason Collins, Paul Perry, Cheryl Chandler, and Captain Williams with respect to Plaintiff's claims against these defendants in their official capacities and as to Plaintiff's claims for injunctive reliefs, but **DENIES IN PART** the motion with respect to the Plaintiff's claims for monetary damages against those defendants in their individual capacities; **GRANTS IN PART** the motion to dismiss [ECF 39] filed by Defendant Ralph Terry with respect to Plaintiff's claims against him in his official capacity and as to Plaintiff's claim for injunctive reliefs, but **DENIES IN PART** the motion with respect to the Plaintiff's claims for monetary damages against Terry in his individual capacity; **DENIES** Plaintiff's motion for default judgment against Defendant Tim Patterson [ECF 54]; and **DENIES** Plaintiff's motion for entry of default against Defendant Tim Patterson [ECF 58]. In addition the Court **GRANTS** Plaintiff's motion to dismiss [ECF 73], and all claims against Defendants Paul Perry, David Ballard, Jim Rubenstein, Jason Collins, Cheryl

Chandler, and Ralph Terry are hereby **DISMISSED WITH PREJUDICE**. The Court leaves this matter referred to Magistrate Judge Tinsley for additional proceedings concerning the Plaintiff's additional claims.

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 19, 2015

A handwritten signature in blue ink, appearing to read 'Thomas E. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE